

United States District Court
Central District of California

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

DISCOUNTMETALBROKERS, INC.;
DONALD LEE DAYER; KATHERINA
DAYER; and MICHAEL BERMAN,

Defendants.

Case № 2:16-cv-02112-ODW (JCx)

**ORDER GRANTING PLAINTIFF'S
MOTION TO STRIKE [24]**

On June 30, 2016, Plaintiff Federal Trade Commission moved to strike the seventh, ninth, and tenth affirmative defenses asserted in Defendant Donald Lee Dayer's answer. (ECF No. 24.)¹ Plaintiff set the motion to be heard on August 15, 2016, and thus Defendant's opposition was due no later than July 25, 2016. *See* C.D. Cal. L.R. 7-9. To date, Defendant has not filed any opposition. The failure to file a timely opposition may be deemed consent to the granting of a motion. C.D. Cal. L.R. 7-12; *Ghazali v. Moran*, 46 F.3d 52, 54 (9th Cir. 1995).

¹ After consider the moving papers, the Court deems the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78(b); C.D. Cal. L.R. 7-15.

1 Thus, the Court **ORDERS** as follows:

2 1. With respect to Defendant's seventh affirmative defense based on
3 expiration of the limitations period, Plaintiff's Motion is granted **WITHOUT** leave to
4 amend. *See United States v. Dos Cabezas Corp.*, 995 F.2d 1486, 1489 (9th Cir. 1993)
5 ("In the absence of a federal statute expressly imposing or adopting one, the United
6 States is not bound by any limitations period."); *F.T.C. v. Ivy Capital, Inc.*, No. 2:11-
7 CV-283 JCM GWF, 2011 WL 2470584, at *2 (D. Nev. June 20, 2011) (statute of
8 limitations under section 19 of the FTC Act does not apply to claims brought under
9 section 13 of that Act).

10 2. With respect to Defendant's ninth affirmative defense of collateral
11 estoppel/res judicata and tenth affirmative defense of prior pending actions, Plaintiff's
12 Motion is granted **WITH** leave to amend. *Wyshak v. City Nat. Bank*, 607 F.2d 824,
13 827 (9th Cir. 1979) (pleading affirmative defenses must follow the fair notice pleading
14 standard).

15 Defendant shall file an amended answer within fourteen days of the date of this
16 Order.

17 **IT IS SO ORDERED.**

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19 August 5, 2016

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22 **OTIS D. WRIGHT, II**
23 **UNITED STATES DISTRICT JUDGE**
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